

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)
37.86.2207 pertaining to Medicaid)
reimbursement for the therapeutic)
portion of therapeutic youth group)
home treatment services)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On January 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-427 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 31 of the 2008 Montana Administrative Register, issue number 1.

2. The department has amended the following rule as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (2) remain as proposed.

(3) ~~The interim~~ Except as provided in (4), the reimbursement rate for the therapeutic portion of therapeutic youth group home treatment services provided on or after October 1, 2007 ~~through September 30, 2008~~ is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health Fee Schedule. The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated October 1, 2007. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951; or

(b) the provider's usual and customary charges (billed charges).

(4) ~~The final~~ If a provider does not comply with the cost reporting requirements in (5), the final reimbursement rate for the therapeutic portion of therapeutic youth group home treatment services provided during state fiscal year (SFY) 2008, July 1, 2007 through June 30, 2008 will be determined by adjusting the interim rate adopted in (3)(a) for ~~each~~ the provider so that the total amount received for SFY 2008 equals ~~either the lesser of:~~

~~(a) 100% of allowable costs if a provider complies with the cost reporting requirements set forth in (6), except that a provider's final reimbursement rate may not be more than 10% higher or 10% lower than the interim rates adopted in (3)(a); or~~

~~(b)~~ (a) the amounts specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individual Under 18 Years of Age Fee Schedule dated

July 15, 2005 which is adopted and incorporated by reference, if a provider does not comply with the cost reporting requirements set forth in (5). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena MT 59620-2951; or

(b) the provider's usual and customary charges (billed charges).

(5) Each provider of therapeutic youth group home services will report allowable costs for SFY 2008 that starts July 1, 2007 using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department.

(a) The cost settlement study will be performed on an individually licensed therapeutic youth group home basis; and

(b) Reports of allowable costs for SFY 2008 must be received by the department before August 15, 2008.

(6) through (13) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We recommend forgoing the proposed cost settlement for state fiscal year (SFY) 2008, and instead prefer moving directly to an adjusted rate for SFY 2009. The new rate must adequately address a provider's ability to recruit, and retain quality staff, meet licensing requirements, provide quality care, and assure the safety of resident children.

RESPONSE: The department generally agrees. It will forego the proposed cost settlement process and establish an adjusted SFY 2009 rate based on SFY 2008 cost reports. The cost study should reflect the actual cost of services. It is assumed that costs reported will reflect licensure requirements. However, providers who do not participate in the cost study will be subject to recovery of the difference between the SFY 2008 rate and the amount that would have been paid under the SFY 2007 rate.

COMMENT #2: Providers should not be subject to the risk of overpayment recovery.

RESPONSE: The department agrees. It has adopted an alternative to the proposed rule that would have adjusted the SFY 2008 rate up or down a maximum of 10% based on the cost study. The cost study will be used only to develop a new rate for SFY 2009, not to cost settle with providers. For providers who choose not to participate in the cost study, rates will be the same as SFY 2007 (SFY 2005 fee schedule). This way, providers who participate in the cost study will not be at risk of overpayment recovery resulting from the cost settlement process. Providers who do not will be subject to overpayment recovery as explained in the response to

comment #1.

COMMENT #3: We oppose the proposed method of completing the cost study. Examining a previous year's costs only reflects what the department paid providers. Rates should address the ability of providers to determine and pay the fair market value of staff salaries. In addition to cost reports the department should complete a survey of state employee salaries in positions similar to employees of the providers in Montana to adequately approximate the fair market value of staff salaries. Then the department should set benchmark salaries for comparable positions and factor these costs into the 2009 rate.

RESPONSE: The department does not believe there are any state employees in comparable positions to therapeutic group home (TGH) employees. Therefore, it does not plan to conduct a survey of the salaries of state employees comparable to employees of TGH providers. The department believes that the cost study will provide enough information to make an accurate analysis of actual costs including salaries.

COMMENT #4: Providers should not be required to report revenues in the cost report. If revenue from non-Medicaid sources is considered in its cost study, the department might determine it can pay less than allowable expenses if a provider's Medicaid services are subsidized by charitable donations and other non-Medicaid revenues such as endowment income, public grants, and private payer revenue. Do hospitals, physicians, nursing facilities, and other provider types have to report their donations and other non-Medicaid income as a basis for setting Medicaid rates? We would not participate in any methodology that included reporting revenues from donations and other revenues from nongovernment sources.

RESPONSE: The department disagrees. It believes it would not be able to complete a balanced cost study if revenues were not reported. Critical access hospitals are required to report revenue from non-Medicaid sources. The department uses such revenue in the cost settlement process. Hospitals, physicians, and nursing facilities are not reimbursed based on cost. Providers will only be required to report revenues that relate to TGH care. For example, if a TGH has revenue from a charitable endowment, only the amounts donated to the TGH to provide TGH services will be counted by the department. General donations to a provider with more than one cost center will be cost allocated to the TGH services. The cost study will give a provider the opportunity to report exceptional or one time revenues. In addition, providers will have the option of not participating in the cost study.

COMMENT #5: The cost report and the adjusted SFY 2009 rates should take into account an occupancy rate, such as the 85% occupancy rate used by another state to calculate Medicaid reimbursement. The occupancy rate should reflect the number of days youth are continued in service without funding, including additional home visit days beyond those paid for already. We recommend including an allowance for occupancy rate and additional paid therapeutic home visits in the SFY 2009 rate.

RESPONSE: The department will review the occupancy rate when the cost study is completed. The cost study will take into account occupancy rates reflected in data reported in the cost study as well as other data relating to an efficiently run therapeutic group home. The department does not have plans to extend the 14 day therapeutic home visit limit.

COMMENT #6: We recommend a committee be established with equal representation from the department and providers to give input when the cost report data is reviewed and new rates are established for SFY 2009.

RESPONSE: The department will not be establishing a formal committee to conduct the cost study. However, when the cost study is completed, the department will solicit input from providers who participated in the cost study. The department will consider provider recommendations before it proposes adjusted SFY 2009 rates.

COMMENT #7: Will out-of-state TGH providers be participating in the cost reporting process?

RESPONSE: Yes, if they serve a significant number of Montana Medicaid youth.

COMMENT #8: Does the department expect a TGH provider to deliver services to youth and not be reimbursed for allowable costs?

RESPONSE: The purpose of the cost study is to establish a rate based on aggregate allowable costs. The cost study document defines allowable costs, and the department will add clarification to that document if necessary. The new rate will more accurately reflect a provider's ability to recruit and retain quality staff, meet licensing requirements, and provide quality care. The department must stay within legislative appropriations

COMMENT #9: Will the department waive or reduce its expectations of provider compliance with licensure and ARM requirements if these costs are currently not reimbursed?

RESPONSE: No. The department will not wave or reduce its expectations of provider compliance with licensure and ARM requirements. The department will determine through the cost study the actual cost of providing services required by rule.

COMMENT #10: On what basis will the department audit providers if allowable costs for services are established through cost reporting, but not reimbursed?

RESPONSE: The cost study is a tool to identify allowable costs and establish a rate that reimburses providers within the department's legislative appropriation. The department retains the authority to conduct audits and reviews of all Medicaid providers, as provided in its rules.

COMMENT #11: Will the department be willing to downgrade licensing and rules and requirements to align with a provider's final reimbursement if it does not cover all allowable costs?

RESPONSE: No. The department sets minimum standards to address the therapeutic treatment and safety needs of the youth receiving TGH services. Providers will be expected to meet these minimums within their established rate.

COMMENT #12: In the event of successful litigation brought about by a Medicaid youth harmed while in a provider's care, what culpability will be shared by the department for inadequately funding allowable costs upon which required services are dependent?

RESPONSE: These rules are not intended to change the responsibility, rules or requirements for maintaining the safety of youths receiving TGH services. An enrolled provider is responsible for providing services for youth in the TGH. The cost study is a tool to better identify allowable expenses and to determine an equitable reimbursement rate for TGH providers.

COMMENT #13: Please describe the "methodology and standard", as required in the Code of Federal Regulation (CFR 447.201) that has been utilized to "equalize" the Campus Based Therapeutic Youth Group Home (CBTYGH) SFY 2008 interim rate to the exact same rate as other licensing levels? If a methodology and standard have been used, please explain how two very different license levels arrive at the same rate.

RESPONSE: The department's methodology was simply to allocate available funds to augment SFY 2007 rates. Since no cost data were available, the department did not compare the cost of providing care at different TGH license levels. For a further explanation, please see the discussion in the response to comment #14.

COMMENT #14: Please describe the existing methodology and standards utilized for existing therapeutic youth group home rates and how the proposed modified cost settlement process differs. With this increased expenditure of \$91,283.56 in state and federal funds for CBTYGH services, what criteria, baseline, and time frame will be utilized to evaluate that client access has been ensured and expenditures were sufficient on the one hand and also justified? What portion of the \$91,283.56 will be sent to out of state CBTYGH providers? What data suggest that client access is a problem, how large of a problem and for how long? With the extensive differences in licensing and administrative rule requirement between CBTYGH and other therapeutic group homes, will the proposed interim rate for CBTYGH result in an overpayment to CBTYGH and underpayment to others or vice versa for SFY 2008?

RESPONSE: The cost study will be used to develop the methodology to establish the new reimbursement rate for therapeutic group home services for SFY 2009. The department used the following methodology to set the Campus Based Youth Group

Home (CBYGH) rates for SFY 2008. A special appropriation (SA) from the 2007 Legislature was divided by the number of CBYGH bed days in SFY 2007 to get a SA daily rate. This SA daily rate was added to the SFY 2007 rate for the July 1, 2007 to September 30, 2007 rate. For October 1, 2007 to June 30, 2008, the 2007 rate was multiplied by 3.3% and then added to the SA daily rate.

When the appropriation for CBYGH was divided by the number of CBYGH bed days in 2007, the new CBYGH rate did not equal the intensive level TGH rate. The department added an additional \$91,283 (this is the same amount as the appropriation) to increase the CBYGH rates up to the intensive level therapeutic group home rates.

COMMENT #15: With the extensive differences in licensing and administrative rule requirements between CBTYGH and other therapeutic group homes, will the proposed interim rate for CBTYGH result in an overpayment to CBTYGH and underpayment to others or vice versa for SFY 2008?

RESPONSE: No, the reimbursement methodology adopted by the department will not necessarily result in over payments and under payments for SFY 2008. The department will review the licensing requirements and administrative rules after the cost study is completed to ensure that rates and licensing requirements are appropriate for each level of therapeutic group home.

COMMENT #16: The department proposes a cost settlement based upon plus or minus 10% of interim rates to establish final rates for therapeutic group homes. Additionally, correspondence from the CMHB Bureau Chief dated January 18, 2008 stated that the "target reimbursement" for unbundling will be based upon this cost settlement methodology in the event that CMS requires Montana to unbundle rates. If there is not a methodology and standard utilized to establish the interim CBTYGH rate, then the interim rate is an arbitrary benchmarking of CBTYGH interim rates to the other therapeutic group home rates, despite large differences in licensure and requirements. Subsequently, the proposed adjustment of plus or minus 10% is applied to an arbitrary base for CBTYGH. That final rate will then become the "target reimbursement" in the likely event that CMS requires unbundling. Please explain how the proposed rule will not result in an arbitrary CBTYGH final rate that continues to be inadequate in relationship to licensure and ARMS, unfair in relationship to reimbursements at other license levels, and unsuccessful in ensuring eligible client access to in-state Medicaid services. We are concerned about adjusting the TGH reimbursement rate up or down as much as 10% based on our actual cost.

RESPONSE: As explained in the response to comment #1, the department is adopting a payment methodology that will not adjust SFY 2008 rates for providers who choose to participate in the cost study. TGH providers who choose not to participate will be subject to adjustments. The current rates were based on the SFY 2005 base rate. Rates have been increased when legislative appropriations occurred. The department will analyze the cost study to determine the actual cost of

providing services and to establish a rate methodology and standards. If a great disparity in actual cost to rates (and/or charges) is found, it will be reflected in the cost study.

COMMENT #17: The department's proposed rule creates a two tiered fee schedule for SFY 2008 for each therapeutic youth group home licensing category, based upon each provider's compliance or noncompliance with completing a cost report. In correspondence from the CMHB Bureau Chief dated January 18, 2008, the department plans on retaining these two tiers in SFY 2009 whether providers are reimbursed by per diem or unbundled rates. Does the department anticipate operating this two tiered fee schedule for the same licensed services in SFY 2010 and beyond? In the future, which of the two rates will newly licensed therapeutic youth group homes be reimbursed at and based upon what criteria?

RESPONSE: The department will establish one rate for SFY 2009 based on the results of the cost study. It will use actual costs from providers who complete the cost study. The department will use the reimbursement rate from SFY 2007 for providers who do not participate. All providers will have one new rate for SFY 2009, based on the weighted average of "costs" from SFY 2008 and subject to legislative appropriation. The department is waiting for further guidance from CMS regarding unbundled services.

COMMENT #18: On what basis will the department justify expending Medicaid funds to purchase services from a higher cost Medicaid provider who participated in the cost reporting than from a lower cost Medicaid provider who didn't participate for the same licensed service?

RESPONSE: The commentor misinterpreted the department's proposal for SFY 2009. All TGH providers will be paid the same SFY 2009 rate. For a more detailed explanation, please see the response to comment #17. Rates in SFY 2008 may be different based on whether a provider participates in the cost settlement.

COMMENT #19: Which rate will the department offer out-of-state CBTYGH, new and existing providers, and what will be your reasoning?

RESPONSE: All TGH providers will be paid the same rate for SFY 2009 regardless of whether they are an in-state or out-of-state provider. A new provider would be paid based on the methodology described in the rule. The SFY 2008 rate for out-of-state providers will depend on their participation in the cost study. For a more detailed explanation, please see the response to comment #17.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State March 31, 2008.